in before this Board, and in their Lordships' view is devoid of substance. Mr. Chan had ample notice of what was alleged against him before the Inquiry Committee started their investigation. The statutory declaration of February 21, 1973, added nothing to the allegations contained in the two letters of November 3 and 27, 1972, from the complainant of which he had been supplied with copies. Furthermore, before the hearing by the Disciplinary Committee started, Mr. Chan was supplied with a detailed statement of the case against him, to which he had the opportunity, which he took, of delivering a written reply before the Disciplinary Committee commenced their hearing on the facts. The only argument still relied upon before their Lordships' Board is a submission as to the true construction of sections 86(3) and 87(5)(a)(i) of the Act.

The contention is that section 86(3) which has been set out above requires that every written complaint should be supported by a statutory declaration or affidavit; and that this is a condition precedent to the Inquiry Committee assuming jurisdiction to inquire into and investigate the matter. This, it is said, follows from section 87(5)(a)(i) which requires the advocate and solicitor concerned to be provided with a copy of such statutory declaration or affidavit before "any inquiry or investigation begins."

Their Lordships are of opinion, in agreement with the High Court, that upon its true construction section 86(3) leaves to the Inquiry Committee a discretion to decide whether or not a particular written application or complaint should be supported by any statutory declaration or affidavit and if so what statutory declarations or affidavits should be called for and by whom they should be made. If, in their discretion, they do not think any statutory declaration or affidavit to be necessary at that stage they are entitled to begin their inquiry or investigation without it.

It therefore follows that in their Lordships' view the Inquiry Committee were entitled to begin their inquiry and investigation into the complaint if they so thought fit at latest as soon as they had received Mr. Chan's letter of explanation of December 11, 1972, which was in fact the date when the 14 days' notice given in their letter of November 27 expired.

The alternative argument advanced on behalf of the appellant was that, since in the instant case, a statutory declaration was in fact obtained from the complainant on February 21, 1973, the proper inference of fact to be drawn from this is that the Inquiry Committee did not begin their inquiry and investigation until this statutory declaration had been received. If so it was their duty under section 87(5)(a)(i) to provide Mr. Chan with a copy of this before they embarked on their inquiry and, accepting it to have been decided by this Board in *Ratnam* v. *Law Society of Singapore*[1] that the requirements of section 87(5) are mandatory, the failure to comply with this particular requirement rendered all subsequent proceedings by the Inquiry Committee and the Disciplinary Committee a nullity.

In their Lordships' view, the question whether the Inquiry Committee had begun their inquiry and investigation before the statutory declaration was obtained from the complainant on February 21, 1973, or did not begin it until afterwards is an inference of fact to be drawn from such evidence as was before the Disciplinary Committee and the High Court. Both the Committee and the Court drew the inference that the inquiry and investigation was begun by the Inquiry Committee before February 21, 1973. The explanation for their asking for a statutory declaration at that stage may be that since there was a conflict between the facts as stated by the complainant in her letters of complaint and the facts as stated by Mr. Chan in his reply, the Inquiry Committee thought it prudent to obtain a statutory declaration from the complainant verifying her version of the facts before they made their report to the Council.

The Disciplinary Committee and the High Court are much more familiar than their Lordships with the practice of inquiry committees under the Act and their Lordships would be very loath to interfere with inferences of fact in which the Committee and the Court concur. In their Lordships' view, the inference drawn by the Disciplinary Committee and by the High Court was not unreasonable. They accept the High Court's finding that the Inquiry Committee did begin their inquiry and investigation before February 21, 1973. This is sufficient to dispose of the alternative argument on behalf of the appellant.

Their Lordships accordingly dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Kingsford Dorman & Co.; Parker Garrett & Co.*

MAHAN SINGH v. GOVERNMENT OF MALAYSIA

[Privy Council (Lord Diplock, Lord Edmund-Davies, Lord Russell of Killowen, Lord Scarman and Sir Garfield Barwick) May 8-10 and June 22, 1978]

[Privy Council Appeal No. 5 of 1976]

Administrative Law — Termination of service in the public interest — Permanent officer — Whether officer had been dismissed — Whether officer had right to be heard — Public Officers, (Conduct and Discipline) (General Order Chapter D) Regulations, 1969, reg. 44 — Pensions Ordinance, 1951, ss. 5, 8 and 10 — Federal Constitution, arts. 132(2A) and 135(2).

Constitutional Law — Termination of service in the public interest — When amounting to dismissal — Evidence Act, 1950, s. 123 — Federal Constitution, arts. 132(2A) and 135.

The appellant was an officer of the permanent establishment. As a result of a report made by the officer's head of department, his services were terminated by the Director of Operations under Regulation 44 of General Orders Chapter D. The appellant brought an action against the Government for a declaration that the termination of his service was void. It was argued that the appellant had been dismissed and as no reasonable opportunity had been given to him to be heard, the dismissal was void. In the High Court judgment was given for the appellant, but on appeal ([1975] 2 M.L.J. 155) the Federal Court held in effect that the appellant had not been dismissed and therefore was not entitled to a reasonable opportunity of being heard. The appellant appealed.

Held: (1) for dismissal to arise the decision to terminate the employment must be connected with conduct of the servant in relation to his office which was regarded by the Government as unsatisfactory or blameworthy and the consequences of termination must involve an element of punishment;

(2) the fact that the Government decided to terminate the appellant's service under Regulation 44 of Chapter D, if taken by itself, was equivocal as to whether the termination satisfied the first of the two criteria of what constituted dismissal for the purposes of Article 135 of the Federal Constitution. The decision might have been connected with the conduct of the appellant in relation to his office which was regarded by the Government as unsatisfactory or blameworthy or it might have been unconnected with this. The best evidence as to whether it was or was not would be provided by the report of the Officer's Head of Department but as privilege was claimed for this report it was not available and it was necessary to rely upon such inferences as might legitimately be drawn from the available facts;

(3) in this case the appellant's pension was made subject to a deduction of 10% and from this it followed that the Government must have been satisfied when they terminated the service of the appellant that he had been guilty of negligence, irregularity or misconduct in his office;

(4) it was a necessary inference of fact from this that termination of the appellant's service at a reduced rate of pension involved an element of punishment and was connected, at any rate in part, with conduct on his part in relation to his office which the Government regarded as unsatisfactory or blameworthy;

(5) the two criteria of dismissal in the relevant sense were therefore satisfied and what the Government purported to do was to dismiss the appellant within the meaning of Article 135(2) of the Federal Constitution;

(6) as the appellant was not given a reasonable opportunity of being heard, the purported dismissal or termination of service was void.

Cases referred to:-

(1) *Government of Malaysia* v. *Lionel* [1974] 1 M.L.J. 3.

(2) *Munnsamy* v. *Public Services Commission* [1967] 1 M.L.J. 199.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

S.C. Boyd and *S. Gee* (*M. Sivalingam* with them) for the appellant.

D. Farquharson and *N.W. Lyell* for the respondent.

Lord Diplock (delivering the judgment of the Board): This appeal is about whether the Government of Malaysia acted constitutionally in bringing to an end the employment of the appellant in the public service of the Federation. The High Court in Malaysia held that it did not; the Federal Court of Malaysia, on appeal, held that it did.

The appellant's case in the form in which it was presented in those courts included arguments of far-reaching constitutional importance as to the legal relationship between the Government of Malaysia and members of the public services and as to the constitutional validity of the Emergency (Essential Powers) Ordinances Nos. 1 and 2 of 1969 and Regulations made thereunder by the Director of Operations. The greater part of the judgments in both courts below, involving many citations from Indian authorities, is devoted to disposing of these arguments. They were rejected by Narain Sharma J. in the High Court, and by all three members of the Federal Court (Suffian L.P., Lee Hun Hoe C.J. and Ong Hock Sim F.J.) before whom the arguments were renewed. Before their Lordships, however, none of these wider propositions was persisted in.

The only argument with which their Lordships need to deal is that on which the appellant had succeeded in the High Court. In the form in which the appeal has been presented to this Board it turns upon the answer to a relatively simple question of mixed law and fact: Was the appellant "dismissed" within the meaning of that expression as used in Article 135(2) of the Constitution?

Article 135 of the Constitution reads: —

"(1) No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank.

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

...."

It is common ground (a) that at the time when the Government put an end to his employment the appellant was a member of one of the services referred to in the Article; (b) that he was given no opportunity of being heard beforehand; and (c) that there is nothing in the Emergency (Essential Powers) Ordinances nor in any Regulations made thereunder by the Director of Operations to deprive the appellant of his rights under Article 135(2) if, by what the Government did in 1970, they "dismissed" him within the meaning of that article.

The appellant became a member of the permanent establishment of the Government of Malaysia on October 1, 1949, as clerk and Punjabi interpreter. He served as Registrar of the Sessions Court from April 1, 1961 to November 30, 1969. He was then transferred to the Office of the Special Commissioners of Income Tax. On March 20, 1970 a letter was addressed to him by the Director of Public Services. It was in the following terms: —

"I have been directed to inform you that in the exercise of the power conferred under section 10(d) of the Pension Ordinance, 1951, the Government has decided to pension you off in the Public Interest. According to Regulation 44 of the Public Officers Regulation (Conduct and Discipline) (General Order Chapter 'D') 1969, your services will be terminated as soon as you have taken all the leave which you are eligible.

Your eligibility for the pension will be worked out according to the Pension Ordinance, 1951."

The appellant had not yet reached the age of 49. The normal retirement age is 55 and the appellant wanted to continue to be employed in Government service until then. He wrote appealing against the decision to terminate his service; but to no avail. He ceased to work in the Office of the Special Commissioners of Income Tax and his pension was dealt with in accordance with the terms of the following letter of July 29, 1970 addressed by the Director of Public Services to the Secretary of the Ministry of Justice, the department in which the appellant had been serving up to November 30, 1969: —

"Pensioned off in the Public Interest

Enche Mahan Singh, Senior Registrar, Sessions Court

I am directed to refer to your letter KK/Sulit/0.169/20 dated 3rd January, 1970 about the above subject and to inform you that Duli Yang Maha Mulia Seri Paduka Baginda Yang

di-Pertuan Agong has graciously approved the pension benefits be granted to Enche Mahan Singh, Senior Registrar, Sessions Court of which he is eligible to receive as if, he is to be pensioned off on the ground of his health with deduction of 10% of the pension benefit.

According to the decision of paragraph 1 above you may now take action and arrange for the payment of the Pension benefit to the above mention officer."

This letter refers to an earlier letter dated January 3, 1970 from the Secretary of the Ministry of Justice to the Director of Public Services. This is a reference to a report upon the conduct and work of the appellant furnished by the Secretary of the Ministry of Justice to the Director of Public Services and referred by him to the Director of Operations, who agreed to the termination of the appellant's service under Regulation 44 of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969. Privilege was claimed for this report. Its contents have never been disclosed; but it is admitted that it was obtained for the purposes of Regulation 44, and was at no time shown to the appellant.

By Article 132(2A) of the Constitution, which applies to the appellant, it is provided

"Except as expressly provided by this Constitution, every person who is a member of any of the services mentioned in paragraphs ... of Clause (1) holds office during the pleasure of the Yang di-Pertuan Agong...."

So *prima facie*, the Yang di-Pertuan Agong, and during the emergency the Director of Operations under his delegated powers, can terminate the employment of any public servant without notice and at any time he pleases; but this right is subject to the express provision of the Constitution contained in Article 135(2) that a public servant may not be "dismissed" without being given a reasonable opportunity of being heard.

As was held by his Board in *Government of Malaysia* v. *Lionel*[1] not every public servant whose employment is terminated by the Government against his will is "dismissed" within the meaning of this Article. For dismissal to arise, the decision to terminate the employment must be connected with conduct of the servant in relation to his office which is regarded by the Government as unsatisfactory or blameworthy and the consequences of the termination must involve an element of punishment.

Lionel's Case was one in which the first part of this requirement was satisfied; his conduct was regarded as blameworthy. But the second part of the requirement, that there should be a penal element in the consequences of his dismissal, was not. He was a temporary clerk, not on the permanent establishment, but engaged on terms under which his services could be terminated on one month's notice or salary in lieu; and this was given to him. He was treated no differently from the way he would have been if his conduct had been impeccable and the Government had wished to dispense with his services because they had no longer any need for them. The need for a penal element on dismissal had earlier been referred to *obiter* by this Board in *Munusamy* v. *Public Services Commission*.[2]

The Constitution is by Article 4(1) the supreme law of the Federation. The meaning of "dismissed" and "dismissal" in Article 135 cannot be cut down by using the expression in some narrower sense in regulations dealing with the conduct and discipline of members of the public service in order to differentiate between a punishment which necessarily entails forfeiture of eligibility for pension and a punishment which does not.

In the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1968, which were in force before the emergency. Regulation 42 enumerated "the punishments that may be meted out" by the Disciplinary Authority in order of their seriousness. The three most serious were

"(viii) reduction in rank;
(ix) termination of service;
(x) dismissal."

Under these Regulations "termination of service" took place as the result of a recommendation of the Disciplinary Authority which could be made either in consequence of specific charges of unsatisfactory work or conduct brought against the officer under Regulation 39, or in consequence of a more general complaint by the Head of Department under Regulation 47 that the officer's work and conduct made such termination desirable in the public interest. Termination of service differed from dismissal in that it did not *ipso facto* entail forfeiture of eligibility for a pension. This was left to be dealt with under the Pensions Ordinance; but Regulation 39(m), which empowered the Disciplinary Authority to recommend the Government to "retire" an officer if they considered that although he did not deserve dismissal his continued service would be against the public interest, also empowered them to "recommend a reduction on the officer's eligibility (sc. for a pension) as part of the punishment". In their Lordships' view, when an officer's service was terminated by the Government upon the recommendation of a Disciplinary Authority under either Regulation 39 or Regulation 47 of the 1968 Regulations the officer was "dismissed" within the meaning of Article 135 of the Constitution notwithstanding that the expressions "dismissal" and "dismissed" are given a narrow connotation in the Regulations. The two criteria which distinguish dismissal from the other ways in which an officer's service may be brought to an end, connection with the officer's unsatisfactory or blameworthy conduct and the element of punishment, are both satisfied.

The 1968 Regulations were replaced in July 1969 by the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969, made by the Director of Operations in the exercise of powers conferred under the Emergency (Essential Powers) Ordinances No. 1 and No. 2 of 1969. In these Regulations, which were in force by the time the appellant's service was terminated, "termination of service" was deleted from the list of punishments which might be imposed by a Disciplinary Authority which, however, under the new Regulation 30(11) still retained the power, upon the hearing of specific charges of unsatisfactory work or misconduct against an officer, to recommend to the Government that the officer should be required to retire in the public interest instead of being dismissed. In their Lordships' view there is no

significant difference between this and the corresponding provision in Regulation 39(m) of the 1968 Regulations. Termination of employment in consequence of a recommendation of a Disciplinary Authority under Regulation 30(11) constitutes "dismissal" for the purposes of Article 135(2) of the Constitution.

Regulation 44 of the 1969 Regulations, under which the Government in its letter of March 31, 1970 claimed to terminate the service of the appellant, was substituted for Regulation 47 of the 1968 Regulations but is in significantly different terms. It reads as follows: —

"44(1) Notwithstanding these General Orders, where it is represented to or is found by the Government that it is desirable that any officer should be required to retire from the public service in the public interest or on grounds which cannot suitably be dealt with by the procedure laid down in these General Orders, the Government may call for a full report from the Head of Department in which the officer is serving. The said report shall contain particulars relating to the work and conduct of the officer and the comments, if any, of the Head of Department.

(2) Where the Government considers that it requires further clarification, it may cause to be communicated to the officer the complaints by reason of which the termination of his service is contemplated.

(3) If after considering the report or (in the case of the Government having communicated to the officer as in paragraph (2)) after giving the officer an opportunity of submitting a reply to the complaints the Government is satisfied that having regard to the conditions of the services, the usefulness of the officer thereto, the work and conduct of the officer and all the other circumstances of the case, it is desirable in the public interest so to do, the Government may terminate the service of the officer with effect from such date as the Government shall specify.

(4) Where the Disciplinary Authority has recommended to the Government that an officer should be required to retire from the public service in the public interest, the Government may so terminate the service of the said officer.

(5) In every case of such termination of service of an officer under this General Order, the question of pension shall be dealt with in accordance with the law relating to pensions."

Unlike the former Regulation 47, the grounds on which an officer may be required to retire from the public service are not confined to unsatisfactory conduct of the officer. The wording is broad enough to cover cases where the officer's retirement is desirable in the public interest for reasons which have nothing to do with his conduct in relation to his office, which may have been impeccable. On the other hand (a) the requirement in paragraph (1) for a report to be obtained "relating to the work and conduct of the officer", (b) the reference in paragraph (2) to "the complaints by reason of which the termination of his service is contemplated", and (c) the requirements in paragraph (3) that the Government must consider the report before reaching its decision and must have regard, among other things, to "the work and conduct of the officer", all combine to make it clear that termination of service under Regulation 44(3) *may* be imposed by way of punishment for unsatisfactory or blameworthy conduct that has not been made the subject of specific charges under Regulation 30.

Thus, in their Lordships' view, the fact that the Government decided to terminate the appellant's service under Regulation 44, if taken by itself, is equivocal as to whether the termination satisfies the first of the two criteria of what constitutes dismissal for the purposes of Article 135 of the Constitution. The decision may have been connected with conduct of the appellant in relation to his office which was regarded by the Government as unsatisfactory or blameworthy or it may have been quite unconnected with this. No doubt the best evidence as to whether it was or was not so connected would be provided by the report of January 3, 1970; but as privilege under section 123 of the Evidence Act, 1950, has been claimed for this it is not available. Their Lordships are thus driven to relying upon such inferences as may legitimately be drawn from the facts which are available.

In their Lordships' view, if it can be shown that the consequences of the termination of the appellant's service involved an element of punishment, thus satisfying the second criterion for dismissal within the meaning of Article 135, the inference that the first criterion was also satisfied is irresistible. It is not to be supposed that the Government would inflict on the appellant any penalty or disadvantage beyond what was necessarily involved in his ceasing to be employed in the public service, unless his conduct therein was considered by the Government to have been in some respects unsatisfactory or blameworthy.

Their Lordships therefore turn to the Pensions Ordinance, 1951, under section 10(d) of which it was stated, in the letter of March 31, 1970, that the Government had decided that the appellant should be "pensioned off in the public interest." The grant of a pension under the Pensions Ordinance, 1951, is a matter of eligibility only, not of absolute right. Section 5(1) says so. Section 5(2) provides that where an officer has been guilty of negligence, irregularity or misconduct the Yang di-Pertuan Agong may reduce or altogether withhold the pension for which the officer would otherwise be eligible; but apart from this if a pension is granted to an eligible officer the amount of it is to be calculated in accordance with the Regulations scheduled to the Ordinance.

Their Lordships have not overlooked section 9 but this applies only where a pension cannot be granted to an officer under the other provisions of the Ordinance; and such was not the case with the appellant.

Eligibility for a pension is dealt with by section 8. To be eligible the officer must have "retired from the public service" in one or other of the circumstances listed in section 8(2)(a) to (i). Paragraphs (a) and (b) deal with the retiring age of persons in the public service of which the appellant was a member. Fifty-five years is the age of compulsory retirement but earlier retirement from fifty years onwards is permissible with the consent of the Yang di-Pertuan Agong. Paragraph (d) deals with retirement before normal retiring age by reason of ill-health. Paragraphs (e), (f) and (g) are as follows: —

"8(2)(e) on abolition of his office; or

(f) on the termination of his employment in the public interest as provided in this Ordinance; or

(g) on compulsory retirement for the purpose of facilitating improvement in the organisation of the department of which he belongs by which greater efficiency or economy may be effected."

Section 10 provides the machinery for compulsory retirement in circumstances which make the retiring officer eligible for a pension calculated in accordance with the scheduled Regulations. It empowers the Yang

di-Pertuan Agong to require an officer to retire in any of the circumstances described in paragraphs (a) to (h), which for the most part correspond with similar paragraphs in section 8(2). Paragraph (d) of section 10 reads: —

"(d) on the termination of his employment in the public interest."

It is this provision that is referred to in section 8(2)(f).

Compulsory retirement under section 10(d) would have made the appellant eligible for a pension at the same rate as if he had retired by reason of ill-health — subject however to the right of the Yang di-Pertuan Agong to reduce or withhold the pension under section 5(2); but only if he were satisfied that the appellant had been guilty of negligence, irregularity or misconduct. So the letter of July 29, 1970, notifying the Secretary of the Ministry of Justice that the appellant's pension was to be subject to a deduction of 10% from the amount for which he would have been eligible if he had retired by reason of ill-health, compels the conclusion that this was done in exercise of the powers conferred upon the Yang di-Pertuan Agong by section 5(2). From this it follows that the Government must have been satisfied when they terminated his service that the appellant had been guilty of negligence, irregularity or misconduct in his office.

In their Lordships' view it is a necessary inference of fact from this that the termination of the appellant's service at a reduced rate of pension involved an element of punishment and was connected, at any rate in part, with conduct on his part in relation to his office which the Government regarded as unsatisfactory or blameworthy. The two criteria of dismissal in the relevant sense are satisfied and, in their Lordships' view, what the Government purported to do was to dismiss the appellant within the meaning of Article 135(2) of the Constitution and to do so without having given him a reasonable opportunity of being heard. This is prohibited by the Constitution and the purported termination of the appellant's service by the Government is void.

No other step has since been taken to terminate the appellant's service or to require him to retire, although he has now reached an age at which he could be compelled to do so. Accordingly he has continued to be a member of the public service of the Federation and will remain so until he is required to retire. He has continued to be entitled to draw the salary appropriate to the office that he held when his service was purportedly terminated, but is liable to account for the monies he has received purportedly by way of pension. Declarations to this effect were made by the High Court in Malaya but were set aside by the Federal Court.

Their Lordships will accordingly report to His Majesty the Yang di-Pertuan Agong their opinion that this appeal should be allowed, the order of the Federal Court set aside and the judgment of Narain Sharma J. in the High Court in Malaya restored. The respondent should pay the costs of the appeal to the Federal Court and of this appeal.

Appeal allowed.

Solicitors: *Stephenson Harwood; Waltons & Morse.*

PORT SWETTENHAM AUTHORITY v. T.W. WU AND COMPANY (M) SDN. BHD.

[Privy Council (Lord Wilberforce, Viscount Dilhorne, Lord Salmon, Lord Fraser of Tullybelton and Sir Garfield Barwick) April 4-7, 10 and June 19, 1978]

[Privy Council Appeal No. 6 of 1976]

Contracts — Bailment — Duties and responsibilities of bailee — Loss of goods after they were unloaded at wharf — Whether port authority liable — Burden of proof — Reference to English Law — Evidence Act, 1950, s. 106 — Civil Law Act, 1956, s. 3 — Contract Act, 1950, ss. 104, 105 and 114.

Port Authority — Bailee — Limitation of liability — By-law made by Port Authority ultra vires — Port Swettenham Port Authority By-laws 1965, By-law 91(1) — Port Authorities Act, 1963, s. 29.

Administrative Law — Subsidiary legislation — By-laws ultra vires — Port Swettenham Port Authority By-laws, 1965, By-law 91(1) — Port Authorities Act, 1963, s. 29.

The facts in this case were that 93 cases of pharmaceutical goods had been unloaded at Port Klang and kept in the custody of the Port Authority (the appellants). Subsequently only 29 cases were collected by the respondents and some of the contents of the missing cases were recovered in shops in Kuala Lumpur. The respondents brought an action against the appellants for breach of contract and/or conversion of the remaining 64 cases. The learned trial judge (Abdul Hamid J., [1975] 1 M.L.J. 15) found that the onus lay on the appellants to prove that the goods had not been lost because of their negligence or misconduct or that of their servants, and that they had failed to discharge that onus. Accordingly he gave judgment for the respondents. The appellants' appeal to the Federal Court was dismissed ([1975] 2 M.L.J. 73). The appellants appealed.

Held: (1) the onus is upon the appellants under sections 104 and 105 of the Contract Act to prove that they had taken as much care of the respondents' goods as a Port Authority of ordinary prudence would under similar circumstances have taken of its own goods of the same bulk, quality and value as the 64 lost cases;

(2) if there is nothing in the provisions of the Contract Act to establish with certainty whether the onus is upon the bailor to prove the default or upon the bailee to disprove it, those provisions must be interpreted in the light of the common law;

(3) at common law the onus is always upon the bailee, whether he be a bailee for reward or a gratuitous bailee, to prove that the loss of any goods bailed to him was not caused by any fault of his or of any of his servants or agents to whom he has entrusted the goods for safe keeping. Accordingly the onus of proving that the loss of the goods deposited with the appellants in this case, was not caused by the negligence or misconduct of their servants, lay on the appellants;

(4) the appellants in this case have failed to discharge the onus which lay upon them;

(5) By-law 91(1) of the Port Swettenham Authority By-laws, 1965 is invalid as it is *ultra vires* section 29(1)(g) of the Port Authorities Act, 1963, in so far as it purported to limit the Port Authority's liability in respect of a loss occurring with the actual fault or privity of the Authority; and also because it did not only limit but wholly excluded the liability of the Port Authority for the loss of any goods caused by their own misconduct or negligence.

Cases referred to:-

(1) *Lee Heng* v. *Port Swettenham Authority* [1971] 2 M.L.J. 27 at p. 29.

(2) *Kush Kanta Barkakati* v. *Chandra Kanta Kankati* (1923) 28 C.W.N.; 83 I.C. 151.

(3) *Giblin* v. *McMullen* (1868) L.R. 2 P.C. 317.

(4) *Lloyd* v. *Grace, Smith & Co.* [1912] A.C. 716.

(5) *Hunt and Winterbotham Ltd.* v. *B.R.S.* [1962] 1 Q.B. 617.